

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

**FRANK MUCERINO III and
CREEKSIDE TERRACE, LLC,**

Plaintiffs

v.

CHARLES JOSHUA DALE MARTIN,

Defendant

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Case No. 3:21-cv-00284

DEFENDANT MARTIN'S RULE 12(b)(6) MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant moves the Court to dismiss Plaintiffs' claims for defamation and false light privacy. Plaintiffs' Complaint fails to state a claim for defamation upon which relief can be granted because Defendant's statements, made in a private Facebook post, are (1) not defamatory as a matter of law, and (2) not actionable under Tennessee law. Plaintiffs' Complaint fails to state a claim for false light invasion of privacy upon which relief can be granted because (1) Defendant's statements do not cast Plaintiff Mucerino in a false light, (2) Defendant's statements are not actionable, and (3) Defendant's statements were not widely publicized.

In support of this Motion, Defendant relies on his contemporaneously filed Memorandum of Law filed, the Declaration of Charles Joshua Dale Martin (**Exhibit 1**), the November 9, 2020 letter from the Town of Burns Municipal Planning Commission (**Exhibit 2**), and the Initial Case Management Order filed in *Creekside Terrace LLC v. Town of Burns Municipal Planning Commission, et al.*, United States District Court for the Middle District of Tennessee Case No. 3:21-cv-00248 (**Exhibit 3**).

For these reasons, Defendant moves the Court to grant his Rule 12(b)(6) Motion and to dismiss Plaintiffs' Complaint with prejudice.

Respectfully submitted,

/s/ John P. Nefflen

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CERTIFICATE OF SERVICE

I certify that on July 12, 2021, the foregoing *DEFENDANT MARTIN'S RULE 12(b)(6) MOTION TO DISMISS* was filed electronically with this Court and served by operation of the Court's Case Management / Electronic Case Filing System on:

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/s/ John P. Nefflen

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